

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2001-2002

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The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. (There were no vacancies in fiscal year 2001-2002.)

The Nominating Commission also appoints the Chief Justice of Indiana from among the five Supreme Court Justices. On December 11, 2001, the Commission selected the Honorable Randall T. Shepard to serve a fourth five-year term as Chief Justice, beginning March 4, 2002.

The Chief Justice is the *ex officio* Chairman of the Nominating Commission and the Qualifications Commission. The Commission is comprised additionally of three lawyers, elected by other lawyers in their districts, and three non-lawyers who are appointed by the Governor, all to three-year terms. Commission members serving in 2001-2002 were Theodore Lockyear, Esq., Evansville; Linda K. Henderson, Bedford; Karl Mulvaney, Esq., Indianapolis; John Bartlett, Indianapolis; Terrance Smith, Esq., Highland; and Ann Borne, Fort Wayne. Mr. Mulvaney and Ms. Henderson were succeeded in 2002 by Donald Ward, Esq.,

Indianapolis, and by Judy Johns Jackson, Columbus. (On January 1, 2003, Fort Wayne attorney John O. Feighner succeeded Mr. Smith). The Commission met on eight occasions in 2001-2002.

The Nominating Commission also annually certifies former judges as Senior Judges to help qualifying Indiana courts with their caseloads. In fiscal year 2001-2002, the Commission recertified eighty-seven Senior Judges, and certified two new Senior Judges. The Nominating Commission declined to certify one applicant for senior judge status.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office, and, when appropriate, privately cautions judges who have violated the Code of Judicial Conduct; in the most serious cases, the Commission prosecutes formal disciplinary charges in public proceedings. These charges ultimately are resolved by the Supreme Court. Additionally, the Commission and its staff provide judges and others with advice about their ethical obligations.

In fiscal year 2001-2002, the Judicial Qualifications Commission had on its docket two hundred forty-one complaints or allegations of violations of the Code of Judicial Conduct. The Commission investigated forty-five complaints, requiring the judges or candidates to respond to the allegations. Of those, the Commission dismissed sixteen complaints after concluding no misconduct occurred. In sixteen other cases, the Commission issued private cautions. The most commonly issued cautions related to *ex parte* contacts (4) and injudicious demeanor (4), followed by cautions about the appearance of impropriety (3), cautions about delays (2), a caution about unfair treatment of a lawyer (1), a caution about campaign

misconduct (1), and a caution about procedural error (1). Nine complaints were resolved by private cautions without the necessity of investigations. Of those, the cautions were about delays (3), procedural errors (3), injudicious demeanor (2), and a failure to disqualify (1). One hundred eighty-five complaints summarily were dismissed as unfounded, as raising only issues for appeal, or otherwise as outside the Commission's purview. One complaint was dismissed pursuant to a settlement agreement with the judge in another case. Seven formal investigations were pending at the end of the fiscal year.

Two cases charged in the prior year were resolved in 2001-2002. In *In re Funke*, 757 N.E.2d 1013 (Ind. 2001), the judge and the Commission agreed to a fifteen-day suspension from office without pay based on the judge's failure to disqualify from a series of protective order cases in which relatives had interests, his *sua sponte* actions on behalf of litigants in those cases, and his practice of allowing the clerk's office to use his signature stamp on protective orders, which led to the appearance that he issued a protective order on behalf of his father. In *In re Spencer*, 759 N.E.2d 1064 (Ind. 2001), the judge and the Commission agreed to a Public Reprimand in light of the judge's inappropriate campaign promises.

One Commission case, *In re Kern*, 47S00-0105-JD-226, which was charged in the prior year, proceeded to an evidentiary hearing in February, 2002. In April, the Masters, the Honorable Diana LaViolette, Presiding Master, Putnam Circuit Court, the Honorable Phillip I. Adler, Vigo Superior Court 2, and the Honorable K. Mark Loyd, Johnson Circuit Court, issued their report to the Supreme Court and recommended a suspension from office of up to fifteen days. The Commission then filed a recommendation that the Court remove the judge from office and, in

light of that recommendation, the Court suspended the judge with pay pending the Court's final decision.

The Commission filed formal charges against three judges in fiscal year 2001-2002. In *In re Morton*, 25S00-0102-JD-435, the Court approved a settlement agreement to a Public Reprimand based upon the judge's *ex parte* contact, his failure to disclose the contact, and his subsequent failure to disqualify.

In *In re Danikolas*, 45S00-0205-JD-281, the Commission filed charges alleging an improper *ex parte* contact, and in *In re Kern*, 47S00-0206-JD-333, the Commission filed a five-count charge alleging the judge misled the County in seeking reimbursement of his attorney fees in the prior disciplinary case, misled the County and the Commission in justifying his request, submitted claims on behalf of employees for expenses already reimbursed by the Qualifications Commission, made a false statement to the Commission during its investigation, and continued to preside over cases, without disclosure, which cases involved creditors who filed claims in the judge's bankruptcy proceeding. At the end of the fiscal year, these cases were pending the filing of responsive pleadings, after which the Court will appoint a panel of three Masters in each case to preside over evidentiary hearings.

Finally, in fiscal year 2001-2002, Commission counsel responded to over six hundred requests for guidance about the ethics rules, and participated in seminars and panel discussions about the rules. The Commission issued one published opinion, Advisory Opinion #3-01, concerning political endorsements by judicial officers.